Remarks by Sen. Jon Kyl
AWhy the Senate Rejected the CTBT and the Implications of Its Demise@
Carnegie Endowment for International Peace
June 5, 2000

Former Secretary of State George Schultz once complained about Washington that, ANothing ever gets settled in this town. [It=s] a seething debating society in which the debate never stops, in which people never give up -- including me.@ Well, President Clinton has not given up on his dream of a Comprehensive Test Ban Treaty (CTBT) despite its rejection by the Senate last October. In fact, you heard from Gen. John Shalikashvilli in March that his new job as a Special Advisor to the President was to Alay the groundwork for eventual ratification@ of the treaty.

Since the debate will presumably continue outside the Senate, and in the belief that a good debate requires that both sides be represented, I appreciate your willingness to hear another point of view today.

I agree with Governor Bush and the officials from previous administration=s who stood with him on May 24 that we need a different approach to national security issues -- an approach that begins with the premise that the U.S. must be able to act unilaterally in its own best interests. This means, among other things, that no nation should have a veto over U.S. deployment of missile defenses or measures to protect the safety and reliability of our strategic nuclear assets. It means, I believe, that we will work to secure peace and our safety first through our own strength; second; through our relationships with friends and allies; and third, through enforceable agreements which may contribute to peace and stability.

With the Cold War at an end and a new century beckoning, the next administration will have an opportunity to craft new policies and strategies, including new strategies to deal with proliferation of weapons of mass destruction. It will be appropriate to consider whether the CTBT or any test ban treaty has a place in this new construct. A good place to start is to reflect on why the CTBT failed to win even a majority, let alone the required super majority in the Senate.

Process Used to Consider Treaty Was Fair

First, let=s discuss process, and allow me to dispense with the canard that the treaty would have been approved if only those slow Republicans had had more time to think about it -- to be Aeducated.@ Democrats must really be smart, because almost all of them came out for the treaty at the beginning of the debate. Obviously they didn=t need more time.

The whole notion that the process used to consider the treaty was unfair is silly. As many of you know, the business of the Senate is usually established by unanimous consent, as was the case for the CTBT. After badgering by Democrats, the Majority Leader finally offered a

unanimous consent proposal for consideration of the treaty. Democrats objected, demanding more debate time. It was added. All 100 Senators then had an opportunity to object to the second unanimous consent request and, thus, block that agreement from entering into force -- none did. It was only after treaty supporters realized they didn=t have the votes that they reversed their position and called for the Senate to rescind its scheduled vote.

In the two weeks before the full Senate debated the treaty, three Senate Committees held five hearings and heard from over 30 witnesses, including Gen. Shalikashvili, the four appropriate Administration Cabinet Secretaries, the Chairman of the Joint Chiefs of Staff, and the lab directors. Finally, the Senate spent more hours debating the CTBT on the floor than similar treaties like the Chemical Weapons Convention. In fact, the Senate spent more time debating the CTBT than the START-I, START-II, and CFE treaties combined.[1]

What proponents cannot admit is that this treaty was rejected on the merits -- and soundly at that.

Key Arguments Against the Treaty

With regard to the treaty itself, Sen. Richard Lugar summed up the feeling of most Republican Senators when he said, AI do not believe the CTBT is of the same caliber as the arms control treaties that have come before the Senate in recent decades.@ He noted, for example, the lack of even a pretense of enforceability. This treaty was so deficient that it didn=t even define the term Anuclear explosion@ -- exactly what the treaty purports to ban -- because, as Undersecretary John Holum explained in Senate testimony, the Administration Adecided at the outset of negotiations not to seek international agreement on a definition of >nuclear weapons test explosion= in the Treaty text. The course of negotiations confirmed our judgement that it would have been extremely difficult, and possibly counterproductive, to specify in technical terms what is prohibited by the Treaty.@[2]

There were dozens of similar deficiencies in the terms of the treaty; but the fact that the

[1] Senate Foreign Relations Committee press release based on unanimous consent agreements governing the CWC, CFE, START-I, START-II Treaties printed in the Congressional Record on 11/23/91, 9/25/92, 12/22/95, and 4/17/97.

[2] Response by John Holum to Questions for the Record from the Senate Foreign Relations Committee, June 29, 1999.

treaty was poorly crafted was only the beginning. From a substantive point of view, most Senators believed it would have little, if any impact on halting the spread of nuclear weapons, but would seriously jeopardize our security by undermining America=s vital nuclear deterrent.

Treaty Would Undermine America=s Nuclear Deterrent

I will first address concerns about the safety and reliability of our nuclear deterrent.

The weakness of this treaty is illustrated by the fact that proponents usually fall back on the argument that, while it may have many problems, on balance, we=re better off with, than without it. They say it might help in other words -- and, in any event, it can=t hurt.

The Senate Majority concluded it wouldn=t help, and it could hurt.

Most Senators heeded the advice of 6 former Secretaries of Defense who wrote that,

> AAs the Senate weighs whether to approve the CTBT, we believe Senators will be obliged to focus on one dominant, inescapable result were it to be ratified: over the decades ahead, confidence in the reliability of our nuclear weapons stockpile would inevitably decline, thereby reducing the credibility of America=s nuclear deterrent.@

We were aware of the fact that over the years, testing has been the essential element that has maintained the viability of our stockpile. As President Bush noted in a report to Congress in January 1993, AOf all U.S. nuclear weapons designs fielded since 1958, approximately one-third have required nuclear testing to resolve problems arising after deployment.@ And in three-fourths of these cases, the problems were only discovered because of ongoing nuclear testing.

America=s nuclear weapons are the most sophisticated in the world. Each one typically has thousands of parts, and over time the nuclear materials and high explosive triggers in our weapons deteriorate. We lack experience predicting the effects of these changes. We did not design our weapons to last forever. The average shelf life was expected to be about 20 years. In the past, we did not encounter problems with aging weapons, because we continuously fielded new designs as older designs were retired. But under the CTBT, we could not field new designs to replace older weapons, because we could not do the required testing.

Nor is it possible to simply replicate new copies of the old designs without introducing significant uncertainty about the safety and reliability of remanufactured weapons. Neither the materials nor the manufacturing techniques would be the same. The degree of uncertainty involved in trying to do so without testing would be intolerable in any analogous context. In fact, the scientists at Los Alamos Lab trying to reestablish our ability to make plutonium pits are struggling with this very problem. We can currently make plutonium that is more pure than what we previously produced. But we don=t understand the role played by existing impurities and

whether they are necessary to make the weapon work. And we can=t test to confirm the remanufactured weapon works as intended.

I disagree with Gen. Shalikashvili=s assertion that since nuclear weapons play a smaller role in our defense strategy than they previously did that we can accept less confidence in their safety and reliability. A credible nuclear deterrent remains vital for U.S. security. During the Gulf War, we successfully deterred Saddam Hussein from using chemical weapons against American forces because he feared nuclear retaliation.

Since there are now only nine weapon types in our enduring stockpile, it is more important than ever that they each be safe and reliable. A problem affecting even one or two weapon types could make a large portion of our arsenal unusable. Today, the viability of each weapon type is relatively more important, not less, because of the great reduction in the number of designs in the arsenal.

Gen. Shalikasvili also said in his speech that, AWe have refined tried-and-true techniques and developed new approaches to maintaining stockpile safety and reliability without nuclear explosive testing.@ But that is not really true. While I am a strong supporter of the Stockpile Stewardship Program, because I believe it will help us to better maintain our arsenal irrespective of whether we resume testing, the fact is this program is not now and can never be a total substitute for testing.

As Dr. James Schlesinger, who formerly served as Secretary of Defense and Secretary of Energy testified, Ano one now has either the experience or the knowledge to judge the degree of success of the Stewardship Program. When queried, DoD or laboratory officials will indicate that there is >a good chance= that through the program we shall be able to maintain >sufficient= confidence in the stockpile. They also know that it will be more than a decade before we can judge how successful the Stewardship Program will have been, and they recognize that never before have we depended on weapons as old as those steadily aging weapons in the stockpile. In assuring weapon reliability, there is no substitute for nuclear testing. How imperfect a substitute the Stewardship Program will prove to be remains to be seen.@ (emphasis added)

Indeed, when asked during a Senate hearing on the CTBT when the Stockpile Stewardship Program would be up and running, the Director of Los Alamos National Lab, Dr. John Browne testified Asomewhere in the 10 to 20 year period with the [current] plan.@

And the Stockpile Stewardship Program has already fallen behind schedule. For example, the National Ignition Facility at Lawrence Livermore National Lab is one of the linchpin facilities in the program. Without this facility, the Stockpile Stewardship Program cannot succeed. We recently learned that the facility is more than a billion dollars over budget and will be completed several years late. Political support is wavering.

Finally, even if the Stockpile Stewardship Program achieves its goals, confidence in the

safety and reliability of our nuclear weapons will decline without testing. Dr. Paul Robinson, the Director of the Sandia National Laboratory made this point in his testimony stating, AThere is no question that... actual testing of designs to confirm their performance is the desired regimen for any high-technology device, from cars and airplanes to medical... equipment and computers. For a device as highly consequential as a nuclear weapon, testing of the complete system, both when it is first developed and periodically throughout its lifetime to ensure that aging effects do not invalidate its performance, is also the preferred methodology. I and others who are, or have been, responsible for the safety and reliability of the U.S. stockpile of nuclear weapons have testified to this obvious conclusion many times in the past.@ (emphasis added)

In short, it is impossible to conclude that our stockpile will not be harmed by an absolute, permanent ban on testing. That ought to give serious people pause for concern. That was one of the key reasons the CTBT failed, and it will have to be taken into consideration in the development of our strategic policies in the next few years.

Treaty Won=t Halt Proliferation

The second point is that the treaty is not likely to do much good in confronting proliferation of nuclear weapons. To argue otherwise, you=ve got to believe that the likes of Kim Jong-il and Saddam Hussein will suddenly begin playing by Marquis of Queensbury rules. Gen. Shalikashvili put the argument this way AA global ban on nuclear testing essentially rules out a renewed nuclear arms race....@

The fact is, this unenforceable ban rules out nothing. Although nuclear testing is essential to maintaining the sophisticated nuclear weapons in the U.S. arsenal today, it is not required to develop relatively simple first-generation nuclear devices, like those sought by Iran and Iraq. The U.S. bomb dropped on Hiroshima was never tested, and the Israeli nuclear arsenal was built without testing. As CIA Director George Tenet testified, ANuclear testing is not required for the acquisition of a basic nuclear weapons capability (i.e. a bulky, first-generation device with high reliability but low efficiency.) Tests using high-explosive detonations only ([with] no nuclear yield) would provide reasonable confidence in the performance of a first generation device. Nuclear testing becomes critical only when a program moves beyond basic designs to incorporate more advanced concepts.@

Moreover, even countries like Russia could continue to proliferate. Despite its economic woes, Russia has continued to produce new nuclear weapons to replace older weapons that have exceeded their design life. Unlike the U.S., Russia designed its weapons with the need for periodic re-manufacture in mind, so Russia could simply increase its current weapons production rate without violating the treaty.

In his remarks, Gen. Shalikashvili also asserted that, ABanning tests slows the spread of nuclear weapons to more countries by throwing another tough obstacle in the way of anyone who wants nuclear arms.@ Tough obstacle? To be a Atough obstacle@ it would, at a minimum, have to

define what it prohibits, and be verifiable and enforceable, all deficiencies in this treaty. No, the CTBT will not provide a tough obstacle to the acquisition of nuclear arms. In fact, it will not even meet the more modest claim of proponents that it establishes a new international norm against nuclear weapons testing or possession. The Nuclear Nonproliferation Treaty (NPT) ratified by 187 countries is supposed to have already established a norm against nuclear weapons possession. As you know, the NPT calls for parties to the treaty, other than the five declared nuclear powers, to pledge not to acquire nuclear weapons. The CTBT will add nothing useful to the international non-proliferation regime since nations, in effect, would be pledging not to test the nuclear weapons they have already promised never to possess under the NPT.

And to those who say the United States must lead by example -- that by halting nuclear tests ourselves, we will persuade others to follow our example, look at the history of the last eight years. Since the U.S. and Great Britain halted testing in 1992, every other nuclear power except Israel conducted nuclear tests: India, Pakistan, Russia, China, and France have all tested; and a host of rogue nations have furiously pursued their nuclear weapons programs. This whole notion is akin to the cops offering to lead by example -- throwing away their guns in the hope the robbers will do the same! Nations will act in their own best interests irrespective of international norms. That is fact, not theory.

Treaty Was Unverifiable

My remarks today are not intended to completely catalogue all of the problems with the CTBT; but since I mentioned verifiability, just a note about that. Credible evasion techniques like decoupling and anonymous testing in open ocean areas would have permitted cheaters to avoid detection and attribution. The treaty=s provisions allowing for on-site inspections are also deficient. A nation would have the right to designate up to 50 square kilometers as off-limits to inspections, a situation analogous to Iraq=s efforts to bar U.N. inspectors from APresidential palaces.@ As Sandia Lab Director Robinson said, Acompliance with a strict zero-yield requirement is unverifiable... it is very unlikely that the threshold for detection and yield measurement in most parts of the world will ever reach the level to identify these yields as nuclear tests, and hence as violations to the U.S. understanding of the treaty=s central obligation.@ So while the U.S. would strictly comply, other nations could conduct useful low level tests without consequences. At least one nation may already be doing this. A treaty that cannot be enforced does not sustain the utilitarian claim.

Treaties Are Not a Panacea

I=d like to return now to an observation I made at the beginning of my remarks -- that a more successful and realistic strategic posture for the U.S. would rely less on the goodwill of bad actors than what we ourselves can control -- our own defenses. Experience show that we can=t even necessarily rely on our allies in holding treaty violators accountable.

In his remarks, Gen. Shalikashvili placed great reliance in the belief that treaties unite the

international community to punish violators and, hence, reduce the need for robust defense capabilities.[3] I submit that we have to be very careful to avoid relying on treaties to safeguard our security, since the reality is they are rarely enforced. Even when the evidence is clear, there are almost always overriding national (usually diplomatic) reasons for treading lightly on violators. Sometimes, its just a case of lack of will, witness the most recent pathetic performance of our allies and the U.N. with respect to Iraq=s thwarting of the U.N. mandated inspection regime -- one would think that a U.N. Resolution like this is an even stronger international commitment than a treaty.

Go back in time: what did the U.S. or our allies do when faced with incontrovertible evidence of Iraq=s use of chemical weapons against Iran in the 1980s in violation of the 1925 Geneva Convention? The U.N. Security Council passed a tepid resolution calling for both sides in the conflict to exercise restraint. After Iraq used chemical weapons again, this time against its Kurdish population, the Security Council passed another resolution that repeated the earlier condemnation of their use in the Iran-Iraq War, and failed even to mention the use of chemical agents against Iraq=s Kurdish citizens! International resolve was so weak, that in when the U.S. proposed a resolution at the U.N. Human Rights Commission in 1989 condemning Iraq=s use of chemical weapons against the Kurds, the initiative was defeated after a motion offered by Iraq (to end action on the initiative) passed by a vote of 17 to 13.

The history of arms control agreements is replete with examples of failure to enforce, including Soviet construction of the Krasnoyarsk radar in violation of the ABM Treaty, chronic Soviet and Russian violations of the BWC, Russian violations of commitments to the U.S. to halt missile and nuclear aid to Iran, and violations of the NPT by North Korea and Iraq. Some even strain the creativity of State Department lawyers. We couldn=t call the Chinese (our strategic partner, you know) for a probable violation of their pledge to adhere to the MTCR because we couldn=t be absolutely certain that the M-11 missile canisters shipped from China to Pakistan actually contained the missiles -- maybe the Pakistanis had some other use for them the lawyers argued!

Honorable nations do not need treaty limits to do the right thing. Rogue states will ignore legal requirements when it suits their interests. We ignore this harsh reality at our own peril.

A Strong Defense Is Our First Priority

In crafting an effective national security policy for the 21st Century, I reiterate that we

[3] In his remarks at the Carnegie Endowment on March 16, 2000, Gen. Shalikashvili stated, AIf some state were to test in total disregard of global arms control norms and agreements, the CTBT helps alert the international community and helps unite it for an effective response.@

have to re-establish the proposition that all component strategies must be based on a foundation of strong U.S. military capability. We must be prepared for failures of treaties, for failures of diplomacy and economic sanctions, for failures of intelligence to accurately predict threats, and for failures of deterrence. As Winston Churchill once observed, in history Athe terrible ifs accumulate.@

When dealing with the proliferation of weapons of mass destruction and ballistic missile delivery vehicles, that means closing our increasing vulnerability to missile attack. It=s extremely disappointing that nearly a decade after 28 Americans were killed during an Iraqi missile attack in Saudi Arabia -- nearly a third of all Americans killed in the Gulf War -- that we still have not fielded effective theater missile defenses. And we are several years from fielding an effective national missile defense system.

I am pleased, however, that in the wake of the Rumsfeld Commission report and North Korea=s launch of a missile over Japan, that a consensus has emerged in the Intelligence Community and at the Defense Department that we need missile defense for the U.S.

In addition to missile defense, we also need to be sure our military forces can fight and win on the battlefield when faced with chemical or biological weapons. For example, in some cases our pilots cannot wear their protective suits and still operate their aircraft; and studies have uncovered deficiencies in the effectiveness of our suits against some agents. In short, effective defenses against ballistic missiles and chemical and biological weapons need to be a critical part of our counter-proliferation strategy.

Increased Emphasis Needs to be Placed on Our Alliance Relationships

In looking back on the history of the Nuclear Age, it=s seems clear to me that, in addition to our own military capabilities, strong alliances are the primary reason more countries have not developed nuclear weapons in the more than 50 years since Hiroshima. Many countries had the technical and financial wherewithal to develop such weapons, but didn=t. In Asia, Japan, South Korea, and Taiwan were persuaded to terminate or forgo nuclear programs in return for U.S. security guarantees. The same was true in Europe, where our NATO allies also agreed to live under the U.S. nuclear umbrella; and, except for Britain and France to a limited degree, to not develop nuclear weapons of their own. This is one reason everyone in the world must have confidence in the U.S. nuclear deterrent. Strengthening ties to our key allies should be our next priority after establishing strong defense capabilities.

It=s extremely troubling to me that the Administration has fanned fears at home and abroad that the U.S. is retreating into AFortress America,@ and that the Senate is full of neo-isolationists. Instead of fanning such fears, our government should be assuring our allies that we intend not only to protect ourselves, but to extend protection to those that want it, and undertake other considerable non-proliferation efforts with their heretofore missing help.

For example, in the wake of North Korea=s Taepo Dong 1 missile launch, Japan has agreed to co-develop the next version of the Navy Theater Wide missile defense system. We should also sell such defenses to Taiwan, which has asked for them; and we should extend such protection to South Korea.

In the Middle East, Israel and the U.S. have jointly developed the Arrow system over the past decade. We should explore additional cooperative ventures, and should explore similar cooperation with other countries in the region like Turkey.

And, we must address the divergence between American and European views on missile defense. The Clinton Administration should not be surprised that now that it is attempting to sell a limited NMD system our European allies are expressing fears of a Adecoupling@ of security interests and Russia calls it Adestabilizing.@ Those were precisely the arguments the Administration spun during the seven years it opposed deployment of a national missile defense system. Even now, the President is unwilling to commit to our allies that we will share the full capability of missile defenses with them. Why aren=t we offering to build ground-based NMD sites in Europe or offering to sell sea-based defenses to allied Navies? We face a common threat, and in the spirit of NATO, we should pursue common measures to deal with the threat.

More Aggressive Enforcement of Nonproliferation Agreements Needed

The final element of an effective nonproliferation strategy involves marshaling the support of our allies for more effective enforcement of existing nonproliferation agreements before entering into more agreements. For example, for several years the Clinton Administration has issued countless diplomatic pleas for Russian restraint in aiding Iran=s nuclear and missile programs. Although Russia has committed to curtail or halt such assistance in the past, it still continues. We need to be more aggressive in halting this kind of assistance to rogue states.

The U.S. provides billions of dollars in IMF loans to Russia, we have provided billions of dollars of bilateral assistance and funding for Nunn-Lugar programs, we have provided democracy building assistance, agricultural aid, and we are partners in the international space station. This deep involvement with Russia should give us leverage. We should use it. Our allies that have been missing in action on this issue and many others, and need to be persuaded to help us.

The issue of enforcement extends to treaties as well. I was disappointed that at the recent NPT Review Conference in New York, the U.S. did not rally the support of friendly nations to focus on the primary threat to that laudable treaty -- the need to enforce it. Instead of devoting sessions to the fact that North Korea, Iraq, and Iran are attempting to develop nuclear weapons in violation of the central principle of the treaty, the U.S. instead spent most of its time explaining how we are on a path toward steep nuclear arms reductions.

Unenforceable and unenforced treaties are worse than none at all, because they cause nations to relax defenses against tyranny in the belief that they=ve done something significant merely by signing the document. Until the world community demonstrates that reliance on treaties is warranted, I believe the U.S. Senate will prefer to rely on U.S. capabilities and strengthening ties to allies to meet common threats, including more cooperation in enforcing nonproliferation agreements.

Conclusion

In many ways, the threats we face now are more complex than those of the Cold War world. With the right leadership and effective strategies, however, I am confident we can successfully meet these challenges. I appreciate your interest in these issues, and your role in seeing that, as Secretary Schultz put it, Athe debate never stops.@